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September 14

Dr. Milton C. Buley,
Commissioner of Education,
State House

Dear Dr. Buley:

Your letter of August 30, 1951, addressed to Mr. Nassikas, has been referred to me for reply.

In your first question you inquire as to the procedure which should be followed in filling vacancies on a school board when two members of the three-member board suddenly and at the same time resign. As you have pointed out, R.L., c. 189, s. 25 clearly provides for the filling of a single vacancy and further provides for filling the entire board should it be necessary. However, the statute makes no distinct provision which would answer your question. I have examined case decisions cited under this section of the statute but none of these decisions throws any light on your question. It is our opinion that the procedure outlined by you, that is, the remaining school board member appointing one additional member and these two appointing the third, would be permissible and in many cases advisable.

In your second question you inquire as to what procedures and whose responsibility in the City of Dover would correspond with the Selectmen in the Town of Hollisford. R.L., c. 64, s. 11 provides:

"Executive Powers. The executive powers of the city and the administration of police, except where vested in the mayor, shall be exercised by the mayor and aldermen; and they shall have the powers, and do and perform all the duties, which the selectmen of towns have, and are authorized or required to do and perform in regard to their towns, unless it is otherwise provided by law."

I have been unable to determine whether or not Dover still retains the City Manager form of government or has gone back to the Mayor and Aldermen. I would feel that the council, together with the Manager and Mayor, would perform the duties of the Mayor and Aldermen if Dover does have the City Manager plan in effect. Should Dover have the Mayor and Aldermen, it is our feeling that the Mayor and Aldermen would exercise the powers and duties corresponding to those of the

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Selectmen in the Town of Holliston. This view is substantiated by the language of the Supreme Court in Walcott v. Manchester, 95 N.H. 50, at 52.

Your third question inquires if a school district may be required to establish new or different bus routes to provide transportation for pupils whose parents might want them to attend a private school in another district to which public school pupils are being transported. In essence this same question was asked by Mr. Farnum last spring. Mr. Green in his letter to Mr. Farnum of May 23, 1951, advised that in his opinion the language of R.L., c. 135, s. 9 was restrictive in its meaning and limited the transportation of private school pupils to the district providing the transportation. Mr. Green said in his letter:

"We therefore construe the law to impose no obligation upon school districts to furnish transportation for students attending private schools beyond the limits of the jurisdiction in which the town is located."

I feel that Mr. Green's opinion was sound and my interpretation would be the same.

I trust that this will give you the information you have requested.

Very truly yours,

Henry Dowse, Jr.
Assistant Attorney General

HJDjr:HP